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December 5, 2018

Hon. Katherine Polk Failla  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, NY 10007  
Failla\_NYSDChambers@nysd.uscourts.gov

VIA ECF & EMAIL

Re: Ricatto v. M3 Innovations Unlimited, Inc.,  
No. 1:18-cv-8404-KPF

Your Honor,

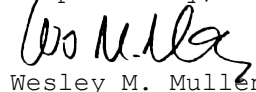
I represent Defendants. I write briefly in reply to Plaintiff's letter, (Doc. 12), opposing Defendants' request for a pre-motion conference.

Plaintiff repeats the conclusory assertion that Kietrys "exercised complete domination" over M3, and claims discovery will "reveal the full extent of Kietrys's transgressions." (Ltr. at 1-2.) Under controlling law, more is required to proceed to discovery on a veil-piercing theory. See Fillmore East BS Fin. Subsidiary LLC v. Capmark Bank, 552 Fed. Appx. 13, 15 (2d Cir. 2014) (affirming dismissal of veil-piercing claims because "conclusory allegations" regarding control are "plainly insufficient to state a claim.>").

Judgment should issue on the contract claims because the parties' agreement is crystal clear. To constitute an event of default, M3 must have "admit[ted] in writing its inability to pay its debts as they become due" or be "adjudged bankrupt or insolvent." (LOC § 5.) Plaintiff does not allege this because it never happened. And even assuming the truth of Plaintiff's vague allegation that "Defendants have indicated to Ricatto unequivocally and repeatedly that ... M3 has no money left and is insolvent," (Compl. ¶ 37), there has been no contractual Event of Default, (LOC § 5), as a matter of law.

This is a straightforward contract dispute between lender and borrower. Plaintiff cannot proffer an "admi[ssion] in writing" of M3's "inability to pay its debts." (LOC § 5.) Plaintiff was therefore obligated to advance funds to M3, and is now liable for its wrongful refusal to do so.

Respectfully,



Wesley M. Mullen